

DELEGATE ANDERSON: Mr. Chairman, I feel that before Delegate Scanlan's steamroller gets too far, we had better stop and look and listen.

Forty states have a provision in their constitution calling for the separation of the power. I am not going to speak at length because I think it is so fundamental, and with the number of lawyers in this Convention, it seems to me a waste of time to even argue the question.

You simply have to take a question or a proposition that I like to cite and if you were to join those powers together, the police officers would stop you on the street, write you off a ticket, find you guilty, and take you to jail.

I say that I have discussed this matter with some other delegates at various times and the only reason they could give for it not being in the constitution was that in the draft constitution it was set up separately, but it does not say that it has to be set up separately. I think we certainly want to keep the main functions of our government separate and distinct, and I would strongly urge that we vote against this amendment.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: Mr. Chairman, fellow delegates, I should like to speak in favor of the amendment.

This proposition of the absolute separation of powers has never been true in history. It started out, I suggest, with the Frenchmen's misconception of what the British Parliament was. I do not need to go into this. I mean, we all know that when the governor vetoes a bill, he is exercising legislative power. There are literally dozens of examples where the powers are not completely separate and never have been, and it is a very misleading thing. By putting it in the constitution, you set up an impossible test, which has been disregarded in the past and probably would be in the future, but it is extremely confusing, particularly when you get into the administrative fields and you try to rigidly separate the three powers. You find immense difficulty.

Now, under this system we have as far as possible, I think, by spelling out the powers and functions of the three separate departments, separated those powers as far as is practicable, but to put this provision in the constitution, to continue it there, I think would be a great mistake.

THE CHAIRMAN: Delegate Weidemeyer.

DELEGATE WEIDEMEYER: Mr. President, members of the Convention, I oppose

this amendment because it strikes out of our constitution one of our fundamental concepts, namely, the separation of power, and I am not at all convinced by the argument of those who say that the legislature's powers are defined clearly in their area, and the governor's powers and the executive's are defined clearly in theirs, the judiciary's are defined clearly in theirs.

Wherever the judiciary is given appointed powers, it is specifically mentioned in the constitution, but beyond those clearly mentioned functions of the main branches of our government is this concept of the separation of powers, and even though the judges' duties are defined in there, I do not want him going out and passing laws, and I do not want the legislature arresting people, and I do not want the other branch of government overstepping, other than what we have clearly provided in the constitution.

Now, maybe this as we have it in our report is not clearly and fully expressed, but Recommendation GP-11 goes into that and recognizes the concept of the separation of powers of government. It also recognizes that the legislature in setting up administrative boards and agencies may provide for powers, provided in so doing, it provides for due process and judicial review.

We have to look back over the history of legislative enactments to set up administrative boards and commissions, but in setting up those boards and commissions most always they are the providers for administrative review of the actions of that commingled board or they provide for judicial review.

The reason they provided for administrative review or judicial review is in view of this prohibitive language. That is where they have gotten around it. No one raised the point. I do not want to take this out and say to them that the green light is on, you can invade any other department of government irrespective of the constitutional provisions, and if you defeat this, if you grant this amendment striking this out, I hope that when you come to GP-11 you will carefully consider it and that you will at least pass that.

THE CHAIRMAN: Delegate Willoner.

DELEGATE WILLONER: Mr. Chairman, Article III, section 60 of the present Constitution, provides that the General Assembly shall have the power to provide by suitable general enactment for the suspension of sentence by the court in criminal cases